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Trade Policy Project

Alignment of Ukraine's Legislation with European Union Provisions for Authorized Economic Operators

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Executive Summary

This paper assesses the alignment of Ukraine's customs legislation, and proposed amendments thereto, to the European Union (EU) legal provisions for authorized economic operators (AEO).

Under the EU legislation, those operators who meet specified eligibility criteria related to their reliability (*i.e.*, appropriate level of compliance over time, financial solvency, appropriate recordkeeping/internal control systems, and safety and security standards) qualify for trade facilitation benefits that are not available to other operators on the same terms.

This paper examines the extent to which Ukraine's legislation conforms to the EU legal provisions in regard to the AEO eligibility criteria; the facilitation benefits provided to qualifying operators; the submission and processing of AEO applications; and monitoring AEO compliance.

Although Ukraine's law was clearly drafted on the basis of the EU model, there are a number of important differences between the AEO provisions of Ukraine's current Customs Code and the EU legislation. These include –

- AEO status is limited to legal entities (that is, natural persons are excluded);
- Applicants for AEO status can be rejected for violations that are not related to the customs legislation (*e.g.*, administrative violations of environmental or labor rules), which may not have any bearing on their risk of non-compliance with customs rules;
- Applicants can be disqualified if they have committed administrative offenses of certain customs rules rather than, as provided under the EU legislation, only “serious” or “repeated” infringements;
- Certain of the facilitation benefits made available to AEOs under EU legislation are not provided under Ukraine's law (*e.g.*, notification of AEO prior to arrival of his goods that the goods are selected for examination);
- Where Customs intends to reject an application, the law does not require Customs to notify the applicant and provided an opportunity to respond and/or make corrections before the rejection decision is taken;
- Grounds for suspension and revocation of AEO certificates vary from those of the EU; and
- There is no provision for use of third-party independent experts to verify compliance with AEO criteria, in lieu of Customs.

This assessment finds that the proposed amendments, which will completely replace the AEO provisions of the current law, are much more closely aligned to the EU legislation. However, certain discrepancies remain in these amendments, and others are introduced.

A most important discrepancy is that the proposed amendments offer qualifying AEOs no movement and clearance-related simplified procedures. To induce operators to participate in the AEO program, the law should provide real facilitation benefits such as the possibility to use simplified declaration procedure, local clearance procedure, and transit simplifications, as these are defined in the EU legislation.

If the proposed amendments are adopted, certain forms and administrative guidelines for Customs officers and applicants must be developed (these are in fact referenced in the text of the proposed amendment). This assessment lists the EU models that should be used for development of these forms and guidelines.

Finally, the existing Cabinet of Ministers resolution defining formalities for implementation of simplifications based on the current law would no longer be valid if the proposed amendments are adopted. However, it would be important to develop and publish implementing rules defining required formalities for use of the simplified declaration, local clearance, and transit simplifications, if these simplified procedures are incorporated in the proposed amendments, as recommended.

I. Introduction

This paper assesses the alignment of Ukraine’s legal regime for authorized economic operators (AEO) to that of the European Union (EU). It includes recommendations for proposed changes to the legal acts to enable implementation of an AEO program that is aligned to the EU regime.

Legal Acts Reviewed

This assessment considered the following legislation of Ukraine-

- Customs Code of Ukraine, as amended, Articles 12 to 18;
- Cabinet of Minister of Ukraine (CMU) Resolution No. 447 of May 21, 2012, “On Approval of the Procedure of Special Facilitation and Simplifications Granted to the AEO,” which is issued under authority of the above-referenced Customs Code articles; and
- Draft Law of Ukraine “On Amendments to the Customs Code of Ukraine (regarding an approved economic operator and the streamlining of customs formalities), which would completely replace the current Customs Code articles on AEOs.

The EU legal acts that were considered in this review are the following-

- EU Community Customs Code (Council Regulation No 2913/92), as amended, Article 5a; and
- EU Commission Regulation No. 2454/93, as amended, Articles 14a-14x

In addition, the EU’s Authorized Economic Operators Guidelines¹ were taken into account.

Organization of this Paper

The detailed assessment and recommendations are set out in Part II of this paper (directly below). **Part II** is organized according to the following subjects:

- AEO Certificate Types, which compares EU and Ukraine AEO categories;
- AEO Eligibility Criteria, or the conditions that an applicant must meet to qualify as an AEO;
- AEO Benefits, or the trade facilitation benefits that legislation make available to an AEO;
- AEO Application Processing, including the required documentation, processing steps and timelines to decide an application for AEO status;
- AEO Monitoring, including grounds and process for suspension and revocation of an AEO certificate
- Implementing Rules.

Part III of this paper summarizes in a list all of the conclusions and recommendations made in Part II.

¹ European Commission, Directorate-General Taxation and Customs Union, TAXUD/B2/047/2011 – Rev.5

II. Analysis and Recommendations

Both Ukraine's Customs Code and the proposed amendments thereto follow the EU model for an AEO program.

While the EU legislation defines only general principles in the primary law (the Community Customs Code) and incorporates the implementation details in rules (the Commission Regulation), Ukraine's Code contains both the EU principles and much of the implementation details. This is particularly true in the case of the proposed amendments, which incorporates a number of provisions from the EU implementing rules.

A. AEO Certificate Types

EU legislation defines three types of AEO certificates²:

- AEO – Customs Simplifications
- AEO –Safety and Security
- AEO – Customs Simplifications/Safety and Security.

The third type is simply a combination of the first two.

Ukraine's Customs Code and the proposed amendments generally follow the EU typology, as follows-

Table 1 EU and Ukraine AEO Certificate Types

EU	Ukraine Customs Code	Ukraine Proposed Amendment
AEO – Customs Simplifications	AEO for facilitations with regard to customs controls	AEO for streamlining of customs formalities
AEO –Safety and Security	AEO relating to security and safety	AEO for reliability and safety
AEO – Customs Simplifications/Safety and Security	AEO for facilitations with regard to customs controls relating to safety and security	*

The proposed amendments to the Customs Code of Ukraine do not provide for a combined AEO certificate such as that found in the EU legislation. However, the proposed amendments do provide that an enterprise may be issued both of the other two types simultaneously. Therefore, in practical effect, the proposed amendment to the Customs Code is aligned to the EU legislation.

For purposes of simplifying the discussion below, the EU names for the AEO types will be used.

² Article 14a, Commission Regulation No. 2454/93.

B. AEO Eligibility Criteria

This section concerns the legal criteria that an applicant must meet in order to obtain AEO status. It compares the legal criteria of the EU legislation with the criteria in Ukraine's Customs Code and in the proposed amendments.

Under the EU legislation, the criteria for AEO status are:

Box 1 EU AEO Eligibility Criteria

EU AEO Eligibility Criteria

- the applicant is **established in the customs territory** (subject to certain exceptions)
- the applicant has an **appropriate level of compliance** with customs requirements
- the applicant has a **satisfactory system of managing commercial and, where appropriate, transport records**, which allows appropriate customs controls;
- where appropriate, the applicant is **financially solvent**; and
- where applicable, the applicant complies with **appropriate safety and security standards**.

Article 5a, Council Regulation No. 2913/92

Not all criteria are applicable to all applicants. In particular, persons who apply for AEO – Customs Simplifications are not required to meet the AEO safety and security standards.

The EU implementing rules elaborate these general criteria. In addition, the EU implementing rules provide that in no case shall an application be accepted where certain defined disqualifying conditions are present. These absolute disqualifying conditions are as follows:

Box 2 EU Disqualifying Conditions

EU Disqualifying Conditions

- the **applicant has** been convicted of a **serious criminal offense** linked to the applicant's economic activity
- the applicant uses a **legal representative** who has been convicted of a **serious criminal offense** related to infringement of customs rules
- the applicant is subject to **bankruptcy** proceedings at the time of submission of the application
- the applicant has an **AEO certificate revoked** in the 3 years prior to submission of the application

Article 14f, Commission Regulation No. 2454/93.

A comparison of Ukraine's eligibility requirements with the EU eligibility criteria is set out in the following table-

Table 2 Comparison of EU and Ukraine AEO Qualifying Criteria

EU Criteria	Ukraine Customs Code		Ukraine Proposed Amendment (Art. 14)
	General Criteria (Art. 13)	Specific Requirement (Art. 14)	
Established in the customs territory	An entity incorporated under the legislation of Ukraine	An appropriate record of foreign economic activity for no less than three years prior to the application date;	An enterprise incorporated and operating in conformity with the legislation of Ukraine
Appropriate level of compliance with customs requirements	Appropriate record of compliance with the requirements of the legislation of Ukraine, including customs requirements	A sufficient proof that its officials were not held administratively liable for the violation of customs rules under Article 472, 482-485 of the Code within three years prior to the application date;	Natural persons who control or may control the operations of the enterprise and/or its founders, executive officers, major shareholders owning its controlling interest do not commit offences against property, in the economic activities or in the service activity areas related to the operations of the enterprise; The enterprise's officers involved in submission to a tax and revenues agency of commercial means of transportation and of documents for customs processing do not fail to comply with the customs rules stipulated in articles 472, 482 – 485 of this Code; Customs processing agents performing actions on behalf of the enterprise as regards submission to a tax and revenues agency of commercial means of transportation and of documents for customs control and customs processing do not fail to comply with the customs rules stipulated in articles 472, 482 – 485 of this Code;
Satisfactory system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls	A satisfactory system of reporting and accounting of goods, means of transport	A satisfactory system of goods accounting enabling to reconcile the documents and information presented to the revenue and duties authorities for customs control and customs clearance to those on economic activities;	The reporting and accounting system of the enterprise: a) is compliant with the accounting principles in effect in Ukraine; b) makes it possible for tax and revenues agencies to perform post-exit inspection of items of goods; c) makes it possible to retrieve data on goods with a different customs status (exempt from this requirement shall be enterprises that have applied for or are already using the “reliability and safety” certificate;) d) provides physical or electronic access by tax and revenues agency officials to information and accounting data (documents);

EU Criteria	Ukraine Customs Code		Ukraine Proposed Amendment (Art. 14)
	General Criteria (Art. 13)	Specific Requirement (Art. 14)	
Financially solvent			<p>e) the organizational chart and the manning table of the enterprise and the procedures of management decision making and such decisions' execution system that is in place at the enterprise conform with the content and the scope of its operations, and ensure efficient governance and control over transactions with items of good and identification of unauthorized actions and legal violations there;</p> <p>f) the enterprise has introduced effective procedures for control over compliance with the tariff and non-tariff regulations of foreign economic activities;</p> <p>g) the enterprise has in place relevant procedures for effectively storing (archiving) and loss prevention of accounting records, information and data;</p> <p>h) the enterprise employees are required (by job descriptions, guidelines etc.) to report to the tax and revenues agencies all instances of failure to comply with provisions of the tax legislation and those of the customs legislation of Ukraine;</p> <p>i) the enterprise is taking measures to ensure effective protection of documents, information networks and computer systems to prevent unauthorized access thereto;</p> <p>j) the enterprise is capable of performing its financial obligations.</p>
	Proven financial solvency	<p>Clearance of any customs charges and penalties as of the application date;</p> <p>Tax clearance as of the application date;</p> <p>Clearance of any financial obligations found in the course of documentary examination as of the application date.</p>	<p>The enterprise has no arrears in the tax and duty payment, no outstanding cash debts to be paid as required by desk (documentary) audit, and complies with other provisions of the tax legislation and those of the customs legislation of Ukraine;</p>

EU Criteria	Ukraine Customs Code		Ukraine Proposed Amendment (Art. 14)
	General Criteria (Art. 13)	Specific Requirement (Art. 14)	
Appropriate safety and security standards	(None)	(None)	<p>1) the design of the buildings and facilities used by the enterprise to operate or perform transactions with items of goods and commercial vehicles subject to customs controls renders impossible any unauthorized access to such items of goods and commercial vehicles;</p> <p>2) the enterprise performs measures to ensure an effective control over access to the localities (buildings, facilities, sites) where loading and unloading works are taking place with items of goods and commercial vehicles subject to customs controls;</p> <p>3) measures have been introduced at the enterprise to prevent and identify unauthorized actions with items of goods and commercial vehicles being handled (reprocessed and/or being repaired) on the enterprise's production sites;</p> <p>4) the enterprise has implemented procedures to identify (recognize) commodities that are subject to non-tariff regulation as prescribed by law, and the accounting system of the enterprise makes it possible to retrieve information about such commodities;</p> <p>5) the enterprise is taking effective measures to assess the reliability of its business partners so as to ensure compliance with the legislation of Ukraine and conformity with the terms of foreign economic activity contracts;</p> <p>6) within the limits prescribed by law, the enterprise verifies business proficiency of individuals hired or appointed to positions involving carrying out obligations dealing with security requirements; those employees whose obligations are not supposed to meet security requirements have their business proficiency verified on a periodic basis;</p> <p>7) the enterprise is taking measures to ensure active involvement of its personnel in security arrangements.</p>

Although Ukraine's AEO eligibility requirements are generally based on the EU legislation, Ukraine's requirements do include some important discrepancies, as follows:

- ***Established in the Customs Territory***

Under EU legislation, the applicant for AEO status must be "established in the customs territory," subject to certain exceptions. "Establishment in the customs territory" means that the applicant must be either -

- *a natural person* who is resident in the customs territory, or
- *a legal entity which has* a registered office, central headquarters, or permanent business establishment in the customs territory.

In contrast, Ukraine's law appears to permit only legal entities incorporated under the laws of Ukraine to apply for AEO status. This would seem to disallow natural persons from obtaining an AEO certificate.³ This limitation can exclude, in particular, small and medium businesses operated by individuals (rather than in the form of a legal entity). If the limitation has this effect, it would not be consistent with the principle of EU legislation that SMEs be accommodated to the extent possible in AEO programs.⁴

To more fully align to the EU legislation, as well as provide greater opportunities for SMEs to participate in the AEO program, AEO status should be made available to any person who is a "resident" of Ukraine, as that term is defined in the Customs Code, other than diplomatic missions *etc.*, which could not be subject to the necessary monitoring.

Box 3 Ukraine Definition of Resident

**Ukraine Customs Code
Definition of Resident**

(50) 'Residents' means:

(a) legal entities duly incorporated and validly existing under the laws of Ukraine and located on its territory as well as their standalone units abroad that are not running any economic activity,

(b) diplomatic missions, consular institutions and other official delegations of Ukraine abroad that have diplomatic privileges and immunity,

(c) natural persons: citizens of Ukraine, foreigners and stateless individuals who permanently reside in Ukraine as well as those temporarily staying abroad,

³ However, it may be that under laws of Ukraine other than the customs law, a natural person must register as a legal entity in order to do business; if that is the case, then the customs law would not preclude a natural person (doing business as a legal entity) from obtaining for AEO status.

⁴ EU implementing rules require "that the "customs authorities shall take due account of the specific characteristics of economic operators, in particular of small and medium-sized companies." Article 14a, Commission Regulation No. 2454/93.

(d) standalone units of foreign legal entities located in the territory of Ukraine that run economic activities under the legislation of Ukraine,

(e) an investor (operator) under the production sharing agreement, including the permanent delegation of a non-resident investor.

Article 4, Customs Code of Ukraine

As noted above, the EU legislation allows exceptions to be made to the general requirement that an applicant for AEO status be “established in the customs territory.” In particular, AEO status may be given to those operators from countries outside the EU on the basis of a mutual recognition agreement between the EU and that country.⁵

Ukraine’s Customs Code does not appear to make a similar exception for foreign operators from countries with whom Ukraine has entered into a mutual recognition agreement. However, this discrepancy appears to be resolved by the proposed amendments which expressly provide that Customs may recognize AEO certificates issued to foreign operators on a reciprocal basis pursuant to international agreements signed by the Cabinet of Ministers (Article 12, paragraph 11).

- ***Record of Compliance with Customs Requirements***

The EU requirement that an applicant for AEO status have “an appropriate record of compliance” is elaborated in the EU implementing rules as follows-

Box 4 EU Rules - "Appropriate" Compliance Record

**EU Implementing Rules
“Appropriate” Compliance Record**

1. The record of compliance with customs requirements ... shall be considered as appropriate if over the last three years preceding the submission of the application no serious infringement or repeated infringements of customs rules have been committed by any of the following persons:

- (a) the applicant;
- (b) the persons in charge of the applicant company or exercising control over its management;
- (c) if applicable, the applicant's legal representative in customs matters;
- (d) the person responsible in the applicant company for customs matters.

Article 14h, Commission Regulation No. 2454/93.

⁵ Article 14g, Commission Regulation No. 2454/93.

In addition, as noted above, the EU implementing rules would require an application to be rejected where the applicant has been convicted of a “serious criminal offense linked to the economic activity of the applicant.”⁶

Ukraine’s Customs Code is generally aligned to these EU standards, with two exceptions.

First, EU rules require Customs to consider compliance with customs rules. However, Ukraine’s current law requires Customs to assess compliance with all legislation of Ukraine. This would allow Customs to reject an application if, for example, the applicant has been fined for administrative violations of the labor code or environmental rules. This is inconsistent with the EU rules, as violations of this kind may have no bearing on the applicant’s reliability or competence under the customs laws.

Second, the EU standard requires Customs to consider the significance of the violation of customs rules; that is, only “serious infringements” or “repeated infringements” should be considered disqualifying.

In contrast, Ukraine’s law provides that the application can be rejected if certain specified violations of the Customs Code have been committed (namely, offenses defined in Articles 472 and 482-485). Many of these articles of the Code refer to “smuggling” type violations which, by their nature, could be considered “serious infringements.” However, certain of the referenced articles might involve less serious conduct. For example, under Article 472 (Failure to declare goods, means of transport for commercial use), a person may be subject to a fine as a result of errors or omissions in a declaration submitted to Customs, without any fraudulent intent. A single error of this type should not be considered “serious” and be used as a basis to disqualify an applicant.

The proposed amendments to Ukraine’s Customs Code fix these discrepancies in the current law, at least in part. An applicant would not be disqualified for violations of any law of Ukraine, but for property offenses related to the economic or service activities of the applicant and to specified administrative violations of the Customs Code. However, like the Customs Code, the proposed amendments do not allow Customs to take into account the circumstances and gravity of the criminal offense or administrative violation involved.

The proposed amendments should be revised to provide that convictions for “serious” criminal offenses or “serious” and/or “repeated” violations of Articles 472 and 482-485 would be disqualifying. This qualification would provide Customs with greater flexibility in assessing the applicant’s compliance record. In that regard, it should be noted that the EU implementing rules require Customs to use some flexibility in assessing the importance of prior violations in the context of the particular applicant’s operations.

Box 5 EU “Negligible” Violations

EU Implementing Rules Appropriate Level of Compliance – Negligible Violations

⁶ Article 14f, Commission Regulation No. 2454/93

[T]he record of compliance with customs requirements may be considered as appropriate if the competent customs authority considers any infringement to be of negligible importance, in relation to the number or size of the customs related operations, and not to create doubts concerning the good faith of the applicant.

Article 14h, Commission Regulation No. 2454/93

- ***System of managing commercial and transport records***

As defined in the EU implementing regulation, the requirement of a satisfactory system of managing records requires the applicant to maintain an information systems, operational procedures, and administrative organization to ensure records can be properly audited, that violations and irregularities are detected and reported, and that records and information are properly secured and archived, among other requirements.

The Customs Code requires appears to require applicants to maintain accounting systems that provide an audit trail, but does not have specific requirements concerning organization or administration of the applicant to ensure proper internal controls. However, these provisions are included in the proposed amendment to the Customs Code, which essentially restates in full the EU implementing rules concerning this criterion.

- ***Financial Solvency***

Under both the current law and proposed amendment, in order to demonstrate financial solvency, the applicant must not have any debt, based on a documentary audit. This criterion does not appear to be consistent with the EU definition of “financial solvency.”

Under EU guidelines, “financial solvency” does not require that the applicant have no debts; rather, an entity is considered insolvent when, due to its economic and financial situation, it will be unable to satisfy its debts when they come due. The EU implementing rules provide:

Box 6 EU Definition of Financial Solvency

**EU Implementing Rules
Definition of “Financial Solvency”**

“financial solvency shall mean a good financial standing which is sufficient to fulfill the commitments of the applicant, with due regard to the characteristics of the type of the business activity”

Article 14j, Commission Regulation No. 2454/93

To align more closely to the EU regime, Ukraine’s law should incorporate this definition.

- ***Safety and Security***

The proposed amendments to the Customs Code fully restate the criteria of the EU implementing rules concerning safety and security, and are fully aligned to the EU regime.

C. AEO Benefits

The EU legislation defines trade facilitation benefits applicable for AEO-Customs Simplifications, benefits for the AEO- Safety and Security, as well as certain common benefits that apply to both types of AEO.

The following compares Ukraine's legislation with the EU with respect to AEO benefits.

- **Common Benefits**

The following are the facilitation benefits provided under EU legislation for AEO certificates of both types compared with Ukraine's legislation:

Table 3 Comparison of EU and Ukraine Benefits Applicable to both AEO Types

EU Legislation	Customs Code	Proposed Amendment
AEO shall be subject to fewer physical and document-based controls than other economic operators		x
Where Customs selects AEO's goods for further examination, Customs shall carry out the necessary controls as a matter of priority	*	x
If the AEO so requests, and subject to agreement with Customs, controls may be carried out at a place different than the customs office involved	*	

Under Ukraine's Customs Code, priority in customs control and clearance at the AEO's facility is provided to the holder of an AEO –Customs Simplification certificate but not to the holder of an AEO – Safety and Security certificate. There are no specific provisions in the Code that provide that AEOs of either type shall be subject to fewer controls.

The proposed amendments to Ukraine's Customs Code would align the law to the EU legislation with respect to facilitation benefits available to AEOs of both types, with the one exception indicated in the table above. While other provisions of Ukraine's Customs Code permit any declarant (not just AEOs) to request clearance of goods at a place other than a customs office,⁷ these other provisions are subject to conditions and do not give preference to a request that is made by an AEO.

In addition to the benefits mentioned in the table above, the current Customs Code provides that an AEO shall be entitled to operate a customs warehouse, temporary storage warehouse, or customs cargo terminal under the customs laws provided the warehouse or terminal meets requirements specified under the law for such sites, such as physical security. However, these benefits were removed in the proposed amendment.

- **AEO-Safety and Security Benefits**

⁷ Sections 7 and 8 of Article 247 (Place and time of customs clearance).

The facilitation benefits provided by Ukraine to operators holding an AEO-Safety and Security certificate compared to EU legislation are as follows:

Table 4 Comparison of EU and Ukraine Benefits for AEO-Safety and Security

EU Legislation	Customs Code	Proposed Amendment
AEO may lodge entry and exit summary declarations with reduced data requirements	x	x
Before the arrival of the goods into the customs territory, Customs may notify the AEO when the consignment has been selected for further physical control		x

As is clear from this table, the proposed amendments would be fully aligned with the EU legislation with respect to these benefits.

The current Customs Code defines facilitations to AEO – Safety and Security in addition to those listed in the table above. These other facilitations allow such AEOs to-

- hold goods in temporary storage at their own facilities (rather than customs places);
- export goods directly from their own facilities without presentation of the goods to Customs; and
- remove Customs seals without obtaining prior approval of Customs.

The proposed amendments to the Code would remove these other facilitations from the law.

• ***AEO-Customs Simplifications Benefits***

Under the EU legislation, the benefit made available to the holder of an AEO – Customs Simplifications certificate is that such persons may more easily or directly qualify for a number of simplified procedures that are defined under the customs rules.

In particular, there are various provisions of the EU legislation that allow an operator, *if* authorized by Customs, to use certain simplified procedures with respect to clearance and movement of goods. Certain conditions for use of these procedures defined in the legislation are the same or similar to AEO eligibility criteria. Accordingly, if the operator requesting use of such a procedure is an AEO – Customs Simplifications, EU legislation provides that Customs shall grant the request without “re-examining those conditions which have already been examined when granting the AEO certificate.”

Under the EU legislation, these simplifications that an AEO – Customs Simplifications might more easily or directly obtain (without undergoing re-examination of conditions) are as follows –

Table 5 EU Simplified Procedures Available to AEO – Customs Simplifications

EU Article ⁸	Simplified Procedure	Description
260 269 276 277 282	Simplified Declaration	Allows release of goods on the basis of a simplified declaration (that is, provision of minimal information) subject to subsequent presentation by the declarant of a supplementary declaration. Supplementary declaration can cover a single transaction or multiple transactions (periodic). Taxes and duties are paid after release upon submission of the supplementary declaration. A guarantee for payment of import duties and other charges is required for release.
263 272 276 277 283	Local Clearance	Allows goods to be cleared at the person's own premises or other places designated or approved by Customs, rather than the customs office. On arrival of goods to the operator's facility, the operator notifies Customs (electronically) and enters details of the goods in his records. A supplementary declaration and a guarantee are required.
313a 313b 324a 324e	Simplifications related to Proof of Community Status of Goods	Simplifications related to proving the Community status of goods that move between EU member states, including regular shipping services (shipping services whose vessels regularly move goods between/among ports of EU) and authorized consignors.
372 454a 912g	Transit-Related Simplifications	Allows use of various simplifications in customs transit operations, including use of a comprehensive guarantee, guarantee waiver, authorized consignor status, authorized consignee status, use of seals of a special type, etc.

The possibility under the EU legislation that a holder of an AEO – Customs Simplifications certificate may more easily or directly obtain use of simplified procedures of these types is not fully incorporated Ukraine customs code and is missing entirely from the proposed amendments.

Ukraine provides for the following facilitative benefits for the AEO– Customs Simplifications:

Table 6 Ukraine Facilitations Available to AEO-Customs Simplifications

Customs Law	Proposed Amendment
(1) preferential customs control; (2) placement of goods in temporary storage (closed facilities) without prior approval of the revenue and duties authority; (3) exemption from providing guarantees covering the domestic customs transit of goods other than excisable ones if the declarant is authorised economic operator;	An approved economic operator holding a “streamlining of customs formalities” certificate may get permission from a customs office to proceed with customs procedures as envisaged by this Code, with no verification of eligibility for such a permission, provided compliance with relevant requirements has already been verified at the time of granting the status of an approved economic

⁸ EU Commission Regulation No 2454/93

Customs Law	Proposed Amendment
(4) customs clearance of goods at the facilities of authorised economic operator; (5) lodging of a single customs declaration when the goods are several times imported into or exported from the customs territory of Ukraine by the same person under the same foreign trade agreement within the period of time agreed with the revenue and duties authority.	operator.

As indicated in the table above, the current Customs Code does provide for certain facilitations that are similar to those defined in EU legislation. These include the guarantee waiver for national transit movements (pt. 3), a form of local clearance (pt. 4); and periodic declaration (pt. 5). However, it appears that the proposed amendment to the Customs Code would remove reference to these facilitations.

The proposed amendment to the Customs Code would allow a holder of an AEO-Customs Simplifications certificate to obtain permission to use “customs procedures as envisaged by this Code” without additional re-examination of conditions. This appears to refer to use of those customs procedures defined in Title V (Customs Procedures) that require prior authorization by Customs

Table 7 Ukraine Customs Code - Customs Procedures

Customs Procedure	Requires Permission/Authorization
Import (release for free circulation)	
Re-import	
Export	
Re-export	
Transit	
Temporary Import	
Temporary Export	
Customs warehousing	
Free customs zone	
Duty-free trade	
Inward Processing	x
Outward Processing	x
Destruction or elimination	x
Abandonment to the state	

It appears that the “facilitation” is that a holder of an AEO-Customs Simplifications certificate may more easily or directly qualify for use of these customs procedures, if the conditions for use of procedure were already examined in the context of the AEO certification. However, this seems to be of limited application. As indicated by the table above, there appear to be only three customs procedures that

require prior permission or authorization by Customs. Moreover, it is not clear if any conditions for use of these three procedures are the same as the AEO eligibility criteria.

More importantly, these customs procedures listed in Table 7 are not the clearance or movement simplifications of the kind defined in the EU legislation. These are simply customs procedures that are an alternative to the home use procedure, allowing a different tax and duty treatment based on the use of the goods after importation. There is no real “facilitation” benefit that relates to movement and clearance of goods that would reduce time and costs for the operator.

To provide incentive to operators to apply for AEO-Customs Simplifications status, the proposed amendments should offer clearance and movement-related simplifications for these operators. In particular, the proposed amendments should be more closely aligned to the EU system and offer holders of the AEO-Customs Simplifications certificate the possibility to use the simplified declaration procedure, the local clearance procedure, and/or the transit-related simplifications referenced in Table 5, above.

D. AEO Application Processing

Ukraine’s Customs Code and proposed amendments includes requirements for the submission and processing of applications for authorized economic operator status, including timelines. These appear to have been drafted on the basis of the EU implementing regulations and the EU AEO guidelines. Although the current Customs Code contains certain gaps and discrepancies, these appear to be corrected in the proposed amendment which is closely aligned to the EU AEO application process.

- ***Application Documentation***

The applicant is required to submit the following documents under both Ukraine’s current Customs Code and the proposed amendments to the Customs Code–

Table 8 Ukraine AEO Application Documents

	Customs Code (Article 13)	Proposed Amendments (Article 15)
1	Application form	Application form
2	Self-Assessment Questionnaire	Self Assessment Questionnaire
3	Additional information, due to the specific nature of running some foreign economic activities.	Additional information depending on the special features of its operations and the type of the approved economic operator (AEO) certificate sought
4		A statement of consent to be examined by the tax and revenues agency regarding the assessment of the applicant’s eligibility to be granted the status of an approved economic operator

These requirements are consistent with the EU legislation. That EU legislation refers only to an application; however, the EU AEO guidelines “strongly recommend” that the applicant also submit a

self-assessment questionnaire and this is the practice of a number of the EU member customs administrations.

The Customs Code further defines the content of the self-assessment questionnaire. In contrast, the proposed amendment provides that the “central body of executive power implementing the State customs policy” shall define the self-assessment questionnaire form. The proposed amendment is the better approach, given that the information that Customs may require may change over time, and is more closely aligned to the EU legislation.

- ***Application Processing Steps and Timelines***

The **EU processing of an application for AEO certificate** is depicted in Figure 1, below, and consists of the following steps-

When Customs received an application, it conducts a preliminary and expedited review to determine whether it can be accepted for processing or not.

Customs rejects an application at this preliminary review stage if the applicant presents any disqualifying conditions or if the application is not complete or is submitted to the wrong office.

If Customs requires additional information to make this determination, it must ask for it from the applicant as soon as possible but not later than 30 calendar days from the date of receipt of the application.

If the application is accepted, Customs notifies with applicant with the date of acceptance. If the application is rejected, Customs notifies the applicant and gives reasons.

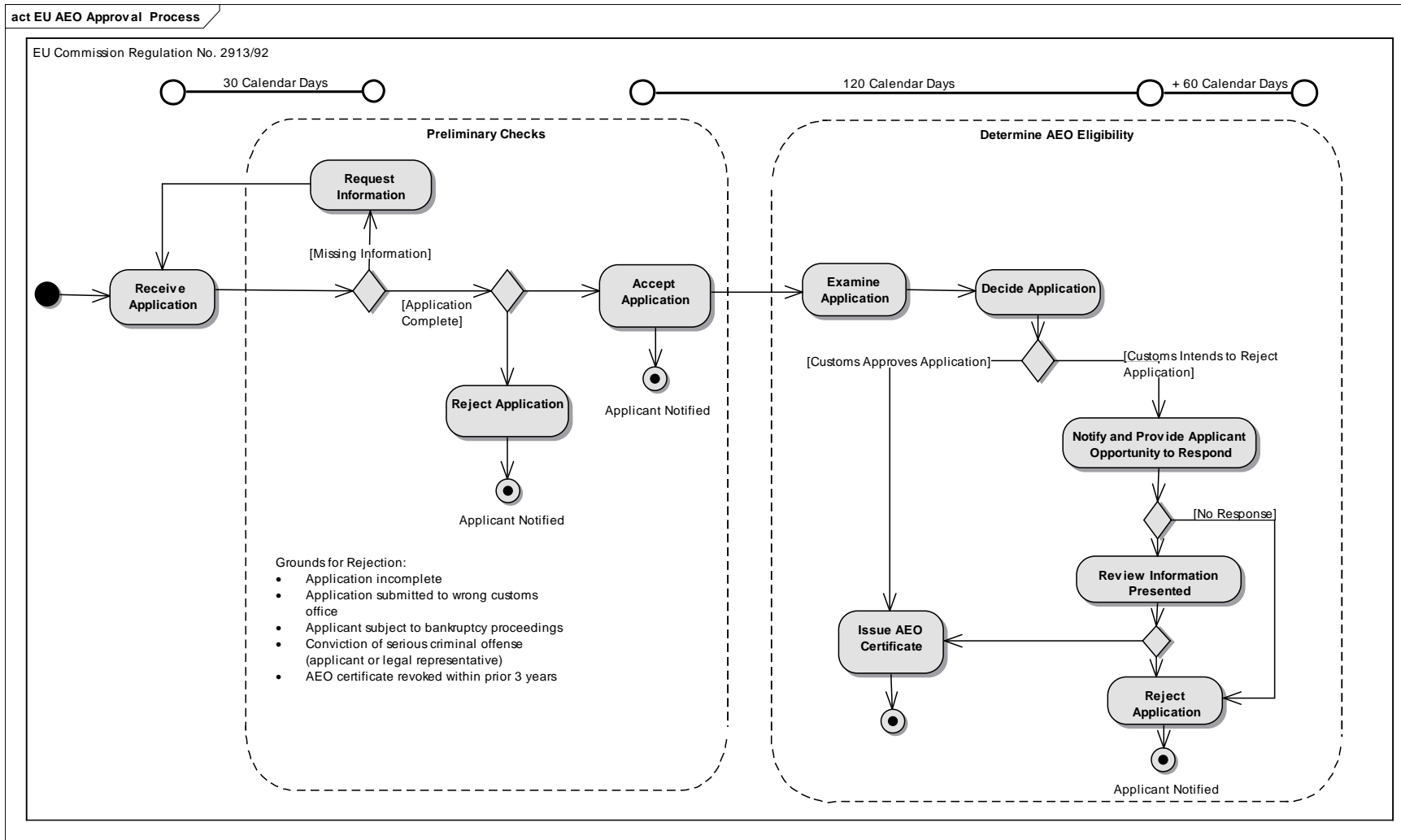
If the application accepted, Customs then determines whether the applicant meets the AEO eligibility criteria.

Customs is required to make a decision within 120 calendar days of the date the application was accepted; this period can be extended by Customs by an additional 60 calendar days (that is, a total period of 180 calendar days), provided Customs notifies the applicant in advance with reasons for the extension. In addition, Customs can extend the 120 day period for a “reasonable” period of time on request of the applicant where, in the course of examination, the applicant undertakes to make adjustments or fix defaults in order to meet the eligibility criteria.

If Customs determine that it will reject the application, because it finds that one or more of the eligibility criteria are not met, it must first notify the applicant and provide the applicant an opportunity to respond within 30 days (this 30-day period suspends the running of the 120/180 day deadline).

The final decision rejecting the application must be given in writing to the applicant, with reasons.

Figure 1 EU - AEO Application Processing



Ukraine's **processing of an application for AEO certificate, as defined in the current Customs Code** (Article 13) is depicted in Figure 2, below, and consists of the following steps-

The applicant submits the application and self-assessment questionnaire to the customs office where the applicant is registered.

The customs office that receives the application conducts a "preliminary (physical and documentary) examination."

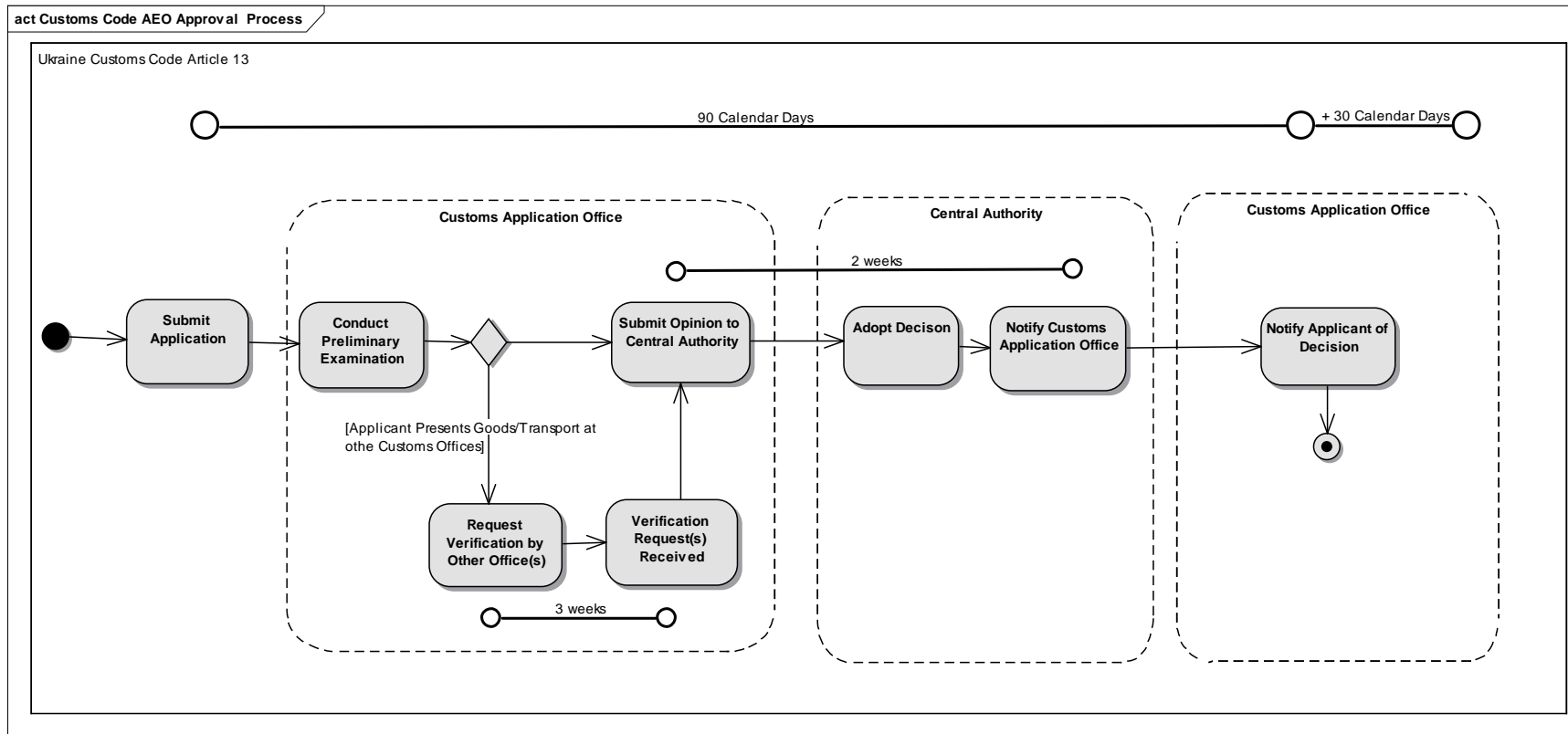
If the applicant has entered goods or means of transport at other customs offices, the customs office where the application is submitted will send a request (electronically) to those other offices, which are required to respond within 3 weeks.

Once the preliminary examination is completed, the customs office submits its opinion to the Central Executive Authority.

The Central Executive Authority is required to adopt a decision to grant or reject the application within two weeks. If rejected, reasons are required to be given to the applicant.

Article 13 provides that the decision shall be granted within 90 calendar days of the date the application is received. However, the period can be extended by an additional 30 calendar days (that is, a total period of 120 calendar days).

Figure 2 Ukraine Customs Code AEO Application Processing



The process set out in the current Customs Code differs from EU process with respect to the following main points:

- Ukraine law provides for shorter period for decision (120 calendar days v. 180 calendar days);
- Ukraine law does not provide for a preliminary/expedited review to determine whether the application can be accepted for processing;
- Ukraine law does not require Customs to request the applicant to provide any additional information within 30 days of receipt of the application;
- Ukraine law does not require that applicant be notified when application is accepted for processing;
- Ukraine law does not require that Customs notify the applicant where it intends to reject an application and provide the applicant with an opportunity to respond.

However, these procedural discrepancies in the current law are largely fixed by the proposed amendments to the Customs Code.

Ukraine's **processing of an application for AEO certificate, as defined in the proposed amendments to the Customs Code** (Article 15) is depicted in Figure 3, below will revise the application process completely and align it more closely to that of the EU.

Under the proposed amendment, the application is submitted to the Central Executive Authority (rather than the local customs office).

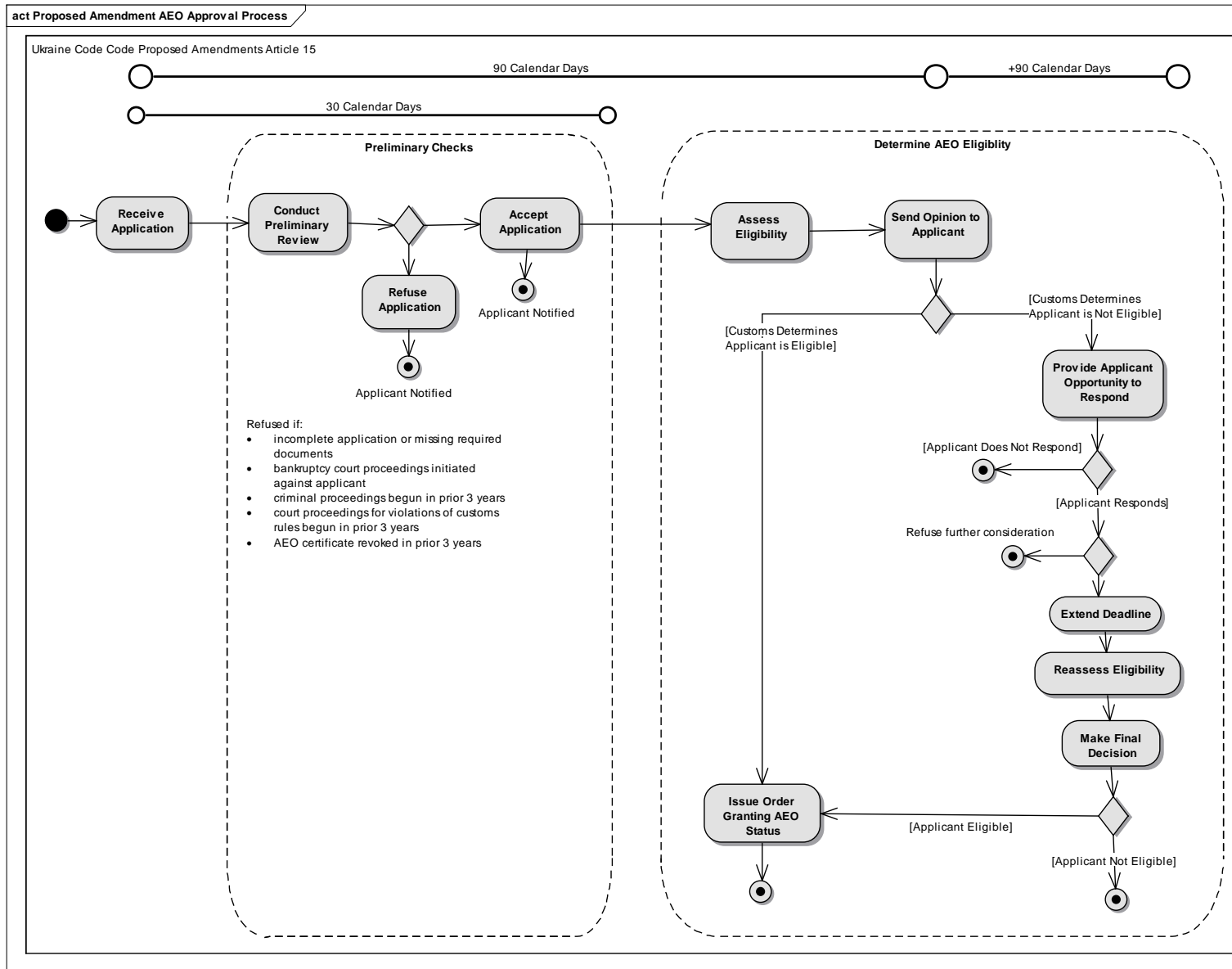
As under the EU process, the Central Executive Authority conducts a preliminary review of the application to determine whether it can be accepted for processing, and requires notification of the results of that review to be given to the applicant. The proposed amendment would require Customs Executive Authority to complete this preliminary review within 30 calendar days.

The proposal does not include the EU provision that requires Customs to notify the applicant within 30 days if additional information is required in order to determine whether the application can be accepted; however, the proposal does require Customs complete this preliminary review within that 30 day period. Accordingly, the practical result may be the same; under Ukraine's proposed amendment the application will be refused with reasons within 30 days if it is incomplete and the applicant may thereafter resubmit with the additional information.

If the Central Executive Authority accepts the application for processing, it then determines whether the applicant meets the AEO eligibility criteria.

The Central Executive Authority is required to make a decision within 90 calendar days of the date the application was accepted. Once it makes a decision, the Central Executive Authority sends its "opinion" to the applicant.

Figure 3 Ukraine Proposed Amendments AEO Application Processing



If the opinion of the Central Executive Authority is that the applicant would not qualify, the applicant shall have an opportunity to respond to the opinion within 30 days. An applicant who wishes to respond requests that the Central Executive Authority extend the period of decision for up to an additional 90 days, and provides information concerning steps it has taken to remedy the flaws identified in the Central Executive Authority's opinion.

(Note: the proposed amendment does not provide for the possibility for Customs to extend the examination period on its own initiative, as under the EU legislation, where, for example, Customs requires additional time for analysis. This limitation on Customs authority to extend processing time – even if for legitimate reasons - appears to be in response to private sector complaints about the current process.)

Prior to expiration of that extended period, the Central Executive Authority must notify the applicant of its final decision.

- ***Use of 3rd-Party Experts***

Under the EU legislation, Customs is authorized to accept “conclusions of experts” in the relevant fields, rather than itself verifying an applicant's compliance with AEO requirements of financial solvency, safety and security, and/or satisfactory system of managing records.⁹

For example, rather than itself examining the applicant's financial statements to determine solvency, Customs could accept a certification of the applicant's financial solvency by an independent accounting firm. Similarly, rather than Customs determining whether the applicant's facilities comply with physical security standards, Customs could accept a certification by an accredited and independent security or inspection firm.

The EU legislation also provides that Customs may accept, as proof of compliance with safety and security standards, an “internationally recognized safety and security certificate” issued on the basis of international standards or an “international standard” issued on the basis of an ISO standard (e.g., ISO standards related to supply chain security). In such cases, where the criteria for issuing those international certificates or standards are the same or similar as Ukraine's, there would be no need for Ukraine Customs to conduct an additional review.

Neither the Customs Code nor the proposed amendments contain such provisions that would allow Customs to accept a certification of third-party, independent experts or an international safety and security certificate or standard in lieu of Customs verification of compliance with AEO conditions and criteria.

E. AEO Monitoring

- ***Monitoring AEOs***

⁹ Article 14n(2), Commission Regulation No. 2454/93.

The EU legislation requires Customs to monitor the compliance of holders of AEO certificates with AEO conditions and criteria, and to re-assess the AEO's eligibility where there have been major changes in the relevant EU legislation and where there is a "reasonable indication" that the AEO no longer meets the criteria.

These or similar provisions are not included in the current Customs Code. However, the proposed amendment does include monitoring provisions which are closely based on the EU legal provisions and the AEO guidelines.

Ukraine's current customs law provides that the entity must have at least 3 years of economic activity. Where the entity does not have this record, the law states that the applicant must consent to unscheduled audits in the first 6 months following issuance of the AEO certificate (Article 14, paragraph 2).

This may not be completely consistent with the EU legislation. EU legislation does provide that new operators, who have been established less than 3 years, may qualify for AEO status, but that such operators shall be subject to "close monitoring" during the first year.¹⁰ However, Customs monitoring can take various forms, and does not necessarily require an audit, which can be particularly burdensome for operators.

In any event, this requirement that new operators must consent to unscheduled audits in the first 6 months after obtaining AEO status is removed in the proposed amendments to the Customs Code which, as noted, are more closely aligned to the EU provisions concerning monitoring of AEOs.

- **Grounds for Suspension**

EU legislation allows Customs to suspend an AEO certificate (i) where "non-compliance with the conditions or criteria for the AEO certificate have been detected," (ii) Customs has reason to believe that the AEO has committed an act that gives rise to a criminal case linked to an infringement of the customs rules, or (iii) the AEO requests suspension for a defined period of time on grounds that it is temporarily unable to comply with AEO criteria.

The following table compares the grounds for suspension under the EU legislation with those defined in the Customs Code and the proposed amendment.

Table 9 Comparison of EU and Ukraine Grounds for Suspension of AEO Status

	EU Legislation	Ukraine Customs Code	Ukraine Proposed Amendment
1	Failure to comply with AEO conditions/criteria	-	Failure to systematically comply with AEO conditions/criteria
2	Reason to believe AEO has committed acts which gives rise to criminal court proceedings related to	AEO's superiors, founder or majority shareholders are held criminally liable for offenses against	Criminal law suit filed against persons who control AEO or its founders, executive officers or controlling shareholders, for offenses against

¹⁰ Article 14q, Commission Regulation No. 2454/93.

	EU Legislation	Ukraine Customs Code	Ukraine Proposed Amendment
	customs rules	property, economic crimes and/or abuse of public office	property, in the economic or service activity of AEO
3	On request of the AEO, where the AEO determines it is temporarily unable to meet AEO criteria	On request of the AEO	On request of the AEO, where it finds that is not able to meet the AEO requirements
4	-	Proceedings instituted against AEO for violation of customs rules under Articles 472 or 482-485 of the Code	Court proceedings against AEO officers responsible for customs matters for failure to comply with customs rules specified in Articles 472 or 482 – 485 of the Code
5	-	Customs has reliable facts and findings that refute the information supplied during the self-evaluation	-
6	-	There is a debt in terms of any customs charges incurred or penalties imposed.	-
7	-	There are financial obligations due found by documentary examination.	-
8	-	The AEO fails to inform Customs of any changes in the information included in its application for AEO status within 5 working days of the change	-

As indicated in the table below, the Customs Code is not aligned to the EU conditions for suspension, generally for the same reasons as discussed above in relation to AEO eligibility criteria. In particular,

- the EU legislation allows suspension in cases of criminal proceedings linked to infringements of customs rules; Ukraine's Customs Code would allow suspension for a much broader range of criminal offenses
- the EU legislation allows suspension where there is a breach of "conditions and criteria" for AEO status, including "serious" or "repeated" infringements of the customs rules; Ukraine's Customs Code allows suspension for infringement of customs rules, regardless if serious or repeated;
- in contrast to EU legislation, Ukraine's Customs Code does not provide for suspension in some cases where AEO criteria or conditions are breached (e.g., where a holder of an AEO-Safety and Security certificate fails to maintain safety and security standards)

- Ukraine's Customs Code provides for suspension where the AEO does not meet certain financial obligations (*e.g.*, customs debt, financial charges) that are not consistent with the EU definition of "financial solvency" as discussed above (see Box 6, above).

On the other hand, the Customs Code does allow Customs to suspend an AEO certificate if Customs determines that the applicant made misstatements or errors in his application for AEO status. Under general EU rules related to customs decisions, misstatements in applications made to Customs can also be grounds for annulment of the AEO status.

Box 7 EU Annulment of Decisions

EU Legislation Grounds for Annulment of Decisions

Article 8

1. A decision favourable to the person concerned shall be annulled if it was issued on the basis of incorrect or incomplete information and:

- the applicant knew or should reasonably have known that the information was incorrect or incomplete, and
- such decision could not have been taken on the basis of correct or complete information.

2. The persons to whom the decision was addressed shall be notified of its annulment.

3. Annulment shall take effect from the date on which the annulled decision was taken.

Source: Article 8, EU Council Regulation No. 2913/92

The proposed amendments to the Customs Code are more closely aligned to the terms of the EU legislation. However, the same discrepancy that appears in the current Customs Code concerning criminal offenses.

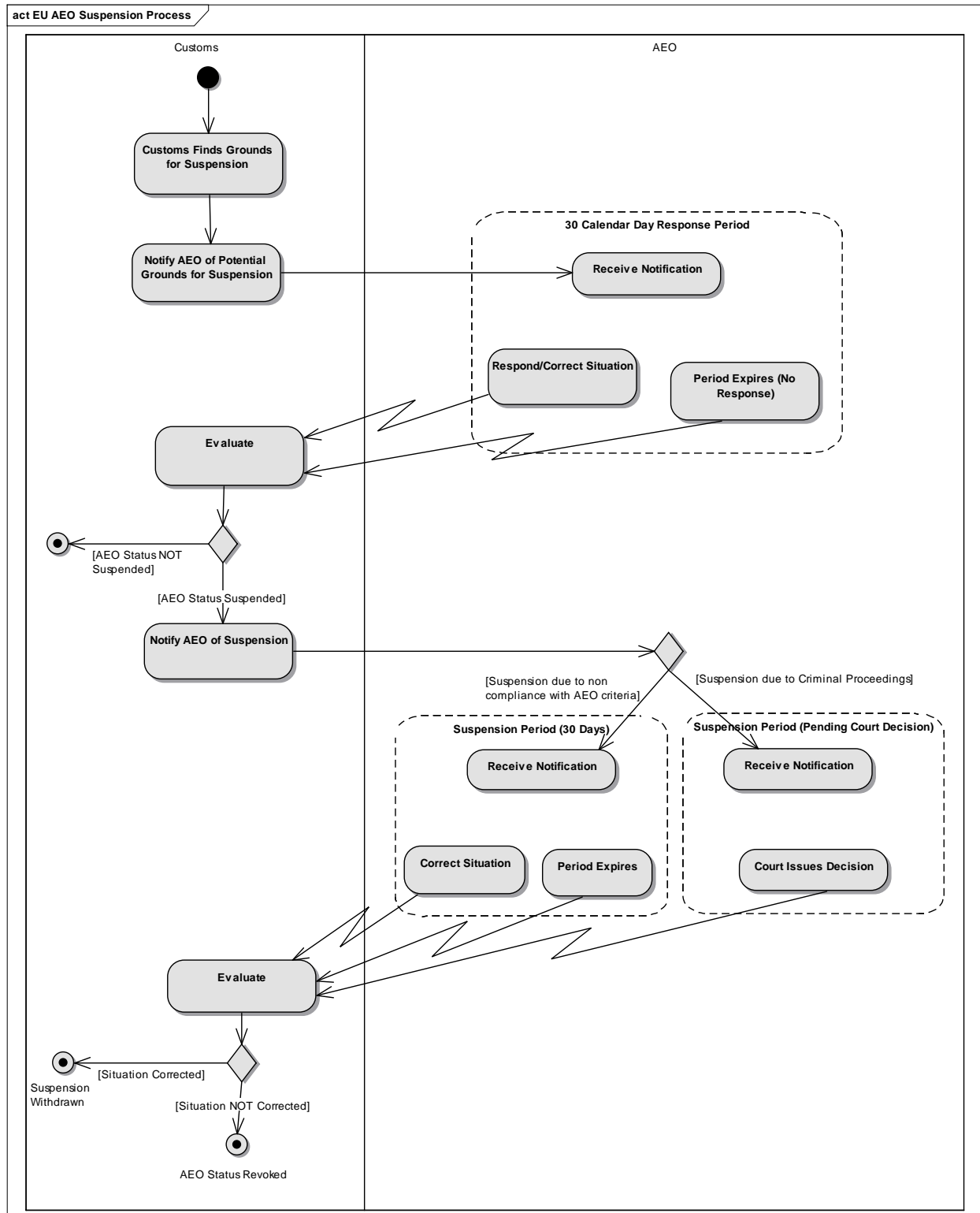
Accordingly, the provisions of the proposed amendment concerning suspension for offenses and administrative violation should be revised to accord with the EU legislation. In addition, grounds for annulment of the certification should also be included in the proposed amendment, unless elsewhere provided in the Customs Code

- ***Suspension Processing***

Under the EU process, where Customs discovers grounds for suspension, it must first notify the AEO of those grounds, and provide the AEO with a period of 30 calendar days to respond or correct the situation.

Once Customs has received the AEO's response, or the 30 calendar days has expired, then Customs may suspend the AEO certificate. Customs must notify the AEO that the certificate is suspended.

Figure 4 EU AEO Suspension Process



Where the suspension is on grounds of non compliance with AEO conditions or criteria, the AEO has an additional period of 30 days to correct the situation (which may be extended by another 30 days, on request). If the AEO fails to correct the situation within that period, Customs will immediately revoke certificate. Where the suspension is on grounds of a criminal proceeding, the AEO certificate is suspended until the decision of the court is made.

The current Customs Code does not provide the AEO with the same opportunity to respond to Customs determination that grounds for suspension exist. However, this deficiency is fixed in the proposed amendment, which is closely based on the EU process for suspension of AEO certificates just described.

- **Grounds for Revocation**

A comparison of grounds for revocation define in the EU legislation with the Customs Code and proposed amendments is as follows-

Table 10 Comparison of EU and Ukraine Grounds for Revocation of AEO Status

	EU Legislation	Ukraine Customs Code	Ukraine Proposed Amendment
1	AEO fails to make the corrections required to comply with AEO conditions and criteria		AEO fails to make the corrections required to comply with AEO conditions and criteria
2	AEO commit serious infringement of customs rules and has no further right of appeal	Conviction of the AEO's executives, founders, or majority shareholders for crimes against property, economic crimes and/or abuse of public office	Criminal legal proceeding filed against natural persons who control or may control the operations of the AEO and/or against its founders, executive officers, major shareholders owning its controlling interest or a guilty verdict had taken effect for offences against property, in the economic activities or in the service activity areas related to the operations of the AEO
		AEO's officials are found administratively liable, more than twice a year, for violation of the customs rules under Article 472, 482-485 of the Customs Code	A court ruling imposes an administrative sanction for offenses specified in articles 472, 482 – 485 of the Customs Code against the AEO's officers responsible for customs formalities
3	AEO fails to make corrections where it requested temporary suspension of its certificate	-	AEO fails to make corrections where it requested temporary suspension of its certificate
4	At the request of the AEO	At the request of the AEO	At the request of the AEO

EU Legislation		Ukraine Customs Code	Ukraine Proposed Amendment
-	-	AEO discontinues operations	-
-	-	AEO's certificate is suspended due to failure to notify Customs of changes related to information provided to Customs in its application, and fails to provide the correct information within 30 days thereafter.	-

As is clear from the table above, there are discrepancies between the EU definition of grounds for revocation and those defined in the Customs Code. Most importantly, the Customs Code does not appear to provide for revocation in cases where an AEO's certificate has been suspended due to non-compliance with AEO criteria and conditions, and that default has not been fixed within the specified period.

The proposed amendments are closely aligned to the EU legislation. However, as previously discussed, the EU legislation provides that an AEO is disqualified in cases of "serious infringements" of customs rules, whereas Ukraine's proposed amendment would disqualify an AEO for non-customs offenses and without regard to the relative severity of the offense.

Moreover, where there is a "serious infringement" of customs rules, the EU legislation further provides that Customs is not necessarily obligated to revoke the AEO certificate, but may consider the specific facts and circumstances-

Box 8 EU Revocation on Grounds of Customs Offenses

EU Legislation
Customs Offenses as Basis for Revocation
[T]he customs authority may decide not to revoke the AEO certificate if it considers the infringements to be of negligible importance in relation to the number or size of the customs related operations and not to create doubts concerning the good faith of the authorised economic operator.
<i>Source: Article 14v,</i>

This authority provided to Customs to allow an AEO to retain its AEO status in justified circumstances despite the commission of "serious infringements" is also omitted from Ukraine's Customs Code and proposed amendments.

F. Implementing Rules

Cabinet of Minister of Ukraine (CMU) Resolution No. 447 defines the formalities to be applied by Customs and the AEO in order to implement Article 15 of the Customs Code. Article 15 lists the simplified procedures that available to holders of an AEO certificate.

The Article 15 simplified procedures, which were discussed above (see Section II.C AEO Benefits), are as follows –

Customs Code of Ukraine – Special Facilitations for AEOs (Article 15)	
1	the reduced volume of information to be supplied to the revenue and duties authority before the goods and means of transport for commercial use enter and/or leave the customs territory of Ukraine;
2	temporary warehousing of goods, means of transport for commercial use placed under customs control in the premises, open and closed storage facilities of authorised economic operator;
3	the removal of customs instrumentality without prior approval of the customs office;
4	the shipment of goods from the premises, open and closed storage facilities of authorised economic operator without presenting them to the revenue and duties authority.
5	preferential customs control;
6	placement of goods in temporary storage (closed facilities) without prior approval of the revenue and duties authority;
7	exemption from providing guarantees covering the domestic customs transit of goods other than excisable ones if the declarant is authorised economic operator;
8	customs clearance of goods at the facilities of authorised economic operator;
9	lodging of a single customs declaration when the goods are several times imported into or exported from the customs territory of Ukraine by the same person under the same foreign trade agreement within the period of time agreed with the revenue and duties authority.

(Simplified procedures 1 to 4 are available to holders of the AEO Safety and Security Certificate; simplified procedures 5 to 9 are available to holders of the AEO Customs Simplifications certificate.)

However, as stated above, however, with the exception of benefit of submission of reduced data in cargo declarations and priority in carrying out customs controls, the proposed amendment to the Customs Code do not contain these facilitations. Accordingly, if the proposed amendments are accepted, it would appear that Cabinet of Minister of Ukraine (CMU) Resolution No. 447 would generally be no longer valid.

This paper recommends that the proposed amendments should be revised with respect to benefits made available to holders of the AEO-Customs Simplifications certificate. In particular, Ukraine's legislation should provide such AEOs with the possibility to use a simplified declaration procedure, a local clearance procedure, and the transit simplifications of the kind provided in the EU legislation. If that recommendation is accepted, an implementing rule replacing Cabinet of Minister of Ukraine (CMU) Resolution No. 447 may be required to define formalities necessary to implement these procedures.

The proposed amendment to the Customs Code contains a significant amount of implementation detail that, under the EU legal regime, is found in the EU implementing regulation rather than the EU Community Customs Code. Nevertheless, there are certain matters for which administrative measures will be required to be developed to support implementation of the AEO program. These are mainly identified in Article 12(10) of the proposed amendments, and generally consist of the standard forms and guidelines for processing AEO applications.

Given that the proposed amendments to the Customs Code are closely aligned to the EU legislation, and clearly intended to implement in Ukraine an AEO program based on the EU model, Ukraine's AEO forms and guidelines should likewise be based on EU models. For convenience, a list of these EU models that should be used is as follows:

Proposed Amendment Article 12 Implementing Forms and Guidelines		EU Model Forms/Guidelines
1	the form of an approved economic operator certificate;	Annex 1d, Commission Regulation (EEC) No. 2454/93
2	the form of an application of an economic agent asking to be granted the status of an approved economic operator;	Annex 1c, Commission Regulation (EEC) No. 2454/93
3	the form of a statement of consent to be examined regarding the assessment of the applicant's eligibility to be granted the status of an approved economic operator;	
4	the form of a questionnaire for self-assessment by an economic subject regarding its eligibility to be granted the status of an approved economic operator;	EU Self-Assessment Questionnaire + Explanatory Note for AEO Self-Assessment Questionnaire Available at http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aes/index_en.htm
5	the form for assessment of information regarding compliance with the eligibility criteria to be granted the status of an approved economic operator;	
6	the method of verification by tax and revenue agencies of information regarding compliance with the approved economic operator eligibility criteria, monitoring and follow-up assessment of an approved economic operator; and	EU Threats, Risks and Possible Solutions Document Available at http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aes/index_en.htm
7	the form of an eligibility opinion.	
8	The central body of executive power implementing the State customs policy may develop and approve guidelines on the conduct of an assessment of information regarding compliance with the approved economic operator eligibility criteria, including those take into accounting the current practices in this regard.	European Commission, Directorate-General Taxation and Customs Union, Authorized Economic Operators Guidelines, TAXUD/B2/047/2011 – Rev.5 Available at http://ec.europa.eu/taxation_customs/customs/policy_issues/customs_security/aes/index_en.htm

III. Conclusion

This assessment identified a number of important discrepancies between the EU legislation and the current Customs Code provisions on authorized economic operators. These included-

Table 11 Customs Code - Summary of Gaps

Discrepancies related to qualification criteria	<ul style="list-style-type: none"> – AEO status is limited to legal entities (excluding natural persons) – Safety and security standards are not defined – Applicants are required to demonstrate a record of compliance with Ukraine legislation generally, rather than record of compliance with the customs rules – Applicants that have committed administrative violations of customs rules shall be disqualified, without regard to consideration of the circumstances or importance of the violation
Discrepancies related to AEO benefits	<ul style="list-style-type: none"> – The benefits of fewer physical and documentary controls, giving priority to operators when controls are required, and allowing controls to be undertaken at the operator's facility are available to either an AEO- Customs Simplification or an AEO – Safety and Security but not to both – The benefit of notification prior to arrival that goods are selected for examination is not provided an AEO – Safety and Security – The possibility of an AEO – Customs Simplifications to use the simplified declaration procedure, local clearance procedure, and transit-related simplified procedures, as these are defined in the EU legislation, is not fully incorporated
Discrepancies related to AEO application processing	<ul style="list-style-type: none"> – The applicant is not required to be notified if Customs intends to reject the application and provided an opportunity to respond and/or make corrections before the rejection decision is taken – The law does not allow Customs to accept verification of AEO criteria conducted by third party, independent experts, or to accept international safety and security certificates or standards in lieu of Customs verification
Discrepancies related to AEO monitoring,	<ul style="list-style-type: none"> – Grounds for suspension and revocation of AEO certificates are not aligned to those of the EU – The applicant is not required to be notified if Customs intends to suspend the application and provided an opportunity to respond and/or make corrections before the rejection decision is taken.

However, this assessment also found that the proposed amendments to the Customs Code resolve most of these discrepancies in the Customs Code, and are therefore more closely aligned to the EU legislation than the current law. Nevertheless, there remain certain discrepancies and omissions in the proposed amendment. To fully align the proposed amendments to the Customs Code to the EU legislation, this paper recommends that the proposed amendment be adopted, with the following changes-

Table 12 Summary of Recommended Changes to the Proposed Amendments to Customs Code

	Recommendation	Comment
1	Revise Article 12, paragraph 1 to allow any resident, as that term is defined in the Article 4 of the Customs	To allow natural persons as well as legal entities to apply for AEO status.

	Recommendation	Comment
	Code, to apply for AEO status (other than diplomats <i>etc.</i>).	
2	Clarify Article 14, paragraph 1 that only “convictions” for “serious criminal offenses” against property in the economic activities or service activity area of the applicant should disqualify the applicant for AEO status.	As Article 14 is now written, commission of a criminal offense, even if relatively minor, would disqualify the applicant.
3	Clarify Article 14, paragraph 1 that only “serious infringements” or “repeated infringements” of the Customs Code Articles 472 and 482-485 would disqualify the applicant for AEO status.	Under EU legislation, Customs should consider the gravity of the breach of customs rules in determining whether the applicant has an “appropriate compliance record.”
4	In Article 14, paragraph 1, adopt the EU definition of “financial solvency.”	As Article 14 is now written, an applicant that has any outstanding cash debt would be disqualified from AEO status, even if the applicant is fully financially solvent.
5	In Article 13, paragraph 2, allow the AEO to request controls to be carried out, where required, at a place other than the customs office involved	This is an additional benefit which is allowed to AEO – Safety and Security under the EU legislation
6	Add to the Customs Code the clearance and movement simplified procedures that are incorporated in the EU legislation. In particular, simplified procedures that should be included in the law include the “simplified declaration” procedure and the “local clearance” procedure.	Without the possibility of customs simplified procedures to expedite movement of goods and reduce costs, there is limited reason or incentive for an operator to apply for the AEO-Customs Simplifications status.
7	Add provisions to allow Customs to accept verification by third-party independent experts of applicant’s compliance with AEO financial solvency, safety and security and/or record management system criteria	Allowing use of accepted or accredited independent experts to verify compliance with criteria in lieu of Customs verification can speed up and reduce costs of the application process
8	Add provision allowing Customs to accept internationally recognized safety and security certificate in lieu of Customs verification of safety and security standards	Acceptance of certification with international standards in lieu of Customs verification can reduce costs and speed up application approvals
9	Provide for annulment or cancellation of AEO certificates in cases where the certificate was obtained on the basis of false or incomplete information which the applicant knew or should have known was false or incomplete	This provision is included in the current law, but does not appear to be included in the proposed amendment
10	Clarify Article 17, paragraph 1 that only “serious infringements” or “repeated infringements” of the Customs Code Articles 472 and 482-485 would be the basis for suspension of AEO status.	Same principle as point 3, above
11	Clarify Article 18 that only “serious infringements” of the customs rules shall be basis for revocation of AEO	See point 2, above.

Recommendation	Comment
certificate, rather than any criminal offense against property	

Cabinet of Minister of Ukraine (CMU) Resolution No. 447 of May 21, 2012 concerns formalities for implementation of Article 15 of the current Customs Code, which concerns the simplifications under the current law. If, as recommended, the proposed amendment is adopted, these Article 15 simplifications were no longer be applicable and, therefore, Resolution No. 447 would be no longer valid.

In place of CMU Resolution No. 447, Customs will be required by the proposed amendment to define standard forms and guidelines for AEO application processing and monitoring. For that purpose, this assessment recommends that the EU forms and guidelines be taken as the model.

Finally, if the recommendation listed in point 6 of Table 12, above, is accepted, an implementing rule will be required to define customs formalities for use of the simplified procedure, local clearance procedure, and the transit simplifications.